

HOUSE BILL 232

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

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AN ACT

RELATING TO PRESCRIPTION DRUGS; ENACTING THE PRESCRIPTION
PRIVACY ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Prescription Privacy Act".

Section 2. DEFINITIONS.--As used in the Prescription
Privacy Act:

A. "individual identifying information" means
information that directly or indirectly identifies a prescriber
or a patient when that information is derived from or relates
to a prescription for any prescribed product;

B. "marketing" means any activity by a company that
makes or sells prescribed products, or by the company's agent,
that is intended to influence the prescribing or purchasing of

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1 the company's products, including:

2 (1) advertising, publicizing, promoting or
3 sharing information about a product;

4 (2) identifying individuals to receive a
5 message promoting the use of a particular product, including an
6 advertisement, brochure or contact by a sales representative;

7 (3) planning the substance of a sales
8 representative visit or communication or the substance of an
9 advertisement or other promotional message or document;

10 (4) evaluating or compensating sales
11 representatives;

12 (5) identifying individuals to receive any
13 form of gift, product sample, consultancy or any other item,
14 service, compensation or employment of value;

15 (6) advertising or promoting prescribed
16 products directly to patients; or

17 (7) disseminating a brochure, media
18 advertisement or announcement, poster or free sample of a
19 prescription drug, a biologic or a medical device;

20 C. "prescribed product" means a biological product
21 as defined in Section 351 of the federal Public Health Service
22 Act or a device or a drug as defined in Section 201 of the
23 Federal Food, Drug, and Cosmetic Act;

24 D. "prescriber" means an individual having the
25 authority to prescribe pharmaceuticals in New Mexico; and

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1 E. "regulated record" means information or
2 documentation from a prescription written by a prescriber doing
3 business in New Mexico or from a prescription dispensed in New
4 Mexico.

5 Section 3. PRESCRIPTION PRIVACY.--

6 A. A person shall not knowingly disclose or use
7 regulated records that include prescription information
8 containing individual identifying information for marketing a
9 prescribed product.

10 B. Regulated records containing individual
11 identifying information may be disclosed, sold, transferred,
12 exchanged or used for nonmarketing purposes consistent with
13 federal and state law.

14 C. The Prescription Privacy Act does not prohibit
15 conduct involving the collection, use, transfer or sale of
16 regulated records for marketing purposes if:

17 (1) the data are aggregated;

18 (2) the data do not contain individual
19 identifying information; and

20 (3) there is no reasonable basis to believe
21 that the data can be used to obtain individual identifying
22 information.

23 D. An authorized recipient of regulated records
24 containing individual identifying information may resell, reuse
25 or re-disclose the information only for a use permitted

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1 pursuant to Subsection B of this section. An authorized
2 recipient that resells or re-discloses individual identifying
3 information covered by the Prescription Privacy Act shall keep
4 records identifying each person that receives the information
5 and the permitted purpose for which the information will be
6 used for a period of five years and shall make these records
7 available to any person upon request.

8 E. The Prescription Privacy Act shall not prevent a
9 person from disclosing individual identifying information to
10 the identified individual as long as the information does not
11 include protected information pertaining to another individual.

12 Section 4. RULEMAKING.--The board of pharmacy shall
13 promulgate rules as necessary to implement the Prescription
14 Privacy Act.

15 Section 5. PENALTY--ENFORCEMENT.--The board of pharmacy
16 shall assess a person that knowingly fails to comply with the
17 requirements of the Prescription Privacy Act, or rules adopted
18 pursuant to that act, by using or disclosing regulated records
19 in a manner not authorized by that act or its rules a fine of
20 not more than fifty thousand dollars (\$50,000) per violation,
21 as assessed by the board of pharmacy. Each disclosure of a
22 regulated record shall constitute a violation. Fines that the
23 board of pharmacy collects pursuant to this section shall be
24 deposited in the current school fund. The attorney general
25 shall take necessary action to enforce payment of fines

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1 assessed pursuant to this section.

2 Section 6. CONSUMER FRAUD.--In addition to any other
3 remedy provided by law, a violation of the Prescription Privacy
4 Act shall be an unfair or deceptive trade practice in violation
5 of the Unfair Practices Act.

6 Section 7. SEVERABILITY.--If any provision of the
7 Prescription Privacy Act or its application to a person or
8 circumstance is held invalid, the remainder of the act or the
9 application of the provision to other persons or circumstances
10 shall not be affected.